

# EXHIBIT - 3

# CONSTITUTION AND BY-LAWS OF THE SWINOMISH INDIAN TRIBAL COMMUNITY

## History

### Enacting:

Indian Reorganization Act Constitution and By-Laws (11/16/35), SOI (1/27/36).

### Amending:

Amend. XV (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. XIV (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. XIII (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. XII (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. XI (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. X (9/7/85), Requesting Res. 84-7-49 (7/11/84), SOI (10/22/85).  
Amend. IX (5/5/66), Requesting Res. 167 (9/1/64), SOI (5/31/66).  
Amend. VIII (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. VII (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. VI (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. V (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. IV (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. III (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. II (3/26/66), Requesting Res. 167 (9/1/64), SOI (4/27/66).  
Amend. I (2/4/50), SOI (4/17/50).

### Interpreting:

Res. 82-2-903 (2/2/82), BIA (2/22/83) (interpreting a prior version of Article IV, Sec. 1).  
Res. 77-3-431 (3/9/77) (interpreting a prior version of Article VI, Sec. 1(k)).

[Ed. Note. Requesting Resolution 167 superseded Requesting Resolution 153 (2/11/64).]

[Ed. Note. Although the Secretary of the Interior signed the approval form for Amendment IX, the form was not dated. The May 31, 1966 dated was obtained from the BIA.]

[Ed. Note. Requesting Resolution 84-7-49 "approve[d] the attached seven amendments." The editors believe that the attachment included the amendments made although a copy of the attachment could not be found. In spite of this, the Official Voters Pamphlet for the 1985 election stated that the Senate requested the election by letter dated February 25, 1988. The language found in the Official Voters Pamphlet is consistent with the language of the amendments approved by the Secretary of the Interior.]

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## CONSTITUTION AND BY-LAWS FOR THE SWINOMISH INDIANS OF THE SWINOMISH RESERVATION OF WASHINGTON

### PREAMBLE

We, the Indians of the Swinomish Reservation, in order to establish a more perfect tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to

exercise certain rights of home rule, in accordance with and by the authority of the act of Congress of June 18, 1934, do ordain and establish this constitution for the Swinomish Indians.

[History] IRA (11/16/35).

## **ARTICLE I-NAME AND TERRITORY**

**SECTION 1.** The name of this organized body shall be the Swinomish Indian Tribal Community, hereinafter called the community.

[History] IRA (11/16/35).

**SEC. 2.** The jurisdiction of the Swinomish Indians shall include all the territory within the original confines of the Swinomish Reservation boundaries, as set forth by Executive order of September 9, 1873, in pursuance of article III of the Treaty of Point Elliott, January 22, 1855 (12 Stat. 928), and shall extend to such other lands as may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

[History] IRA (11/16/35).

## **ARTICLE II-MEMBERSHIP**

**SECTION 1.** The membership of the Community shall consist of:

- (a) All persons of Indian blood lawfully enrolled upon the Swinomish Indian Reservation and residing there June 1, 1935: *Provided*, That this section shall not affect the property rights under existing laws of the Indians of the Swinomish Reservation.
- (b) All children born to any member of the community who is a resident of the reservation at the time of birth of said children.

[History] IRA (11/16/35).

**SEC. 2.** The governing body shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, making any necessary adjustments of property rights.

[History] IRA (11/16/35).

## **ARTICLE III-GOVERNING BODY**

**SECTION 1.** The governing body of the community shall consist of a council, known as the Swinomish Indian senate.

[History] IRA (11/16/35).

**SEC. 2.** This senate shall consist of eleven (11) members duly elected to serve five (5) years, two being elected each year except in years ending in "0" or "5", when three shall be elected.

[History] IRA (11/16/35).

**SEC. 3.** The senate so organized shall elect from its own number: (1) a chairman; (2) a vice-chairman; and from within or without, (3) a secretary; (4) a treasurer: Provided, that the offices of secretary and treasurer may be combined; and may appoint or employ such other officers and committees as may be deemed necessary, such as supervisory commissioners, managers, etc., to be immediately responsible for each separate industry and activity, the direction and management of which are assumed by the senate, for example: Health, welfare, education, fisheries, agriculture, land management, horticulture, oyster culture, construction, employees, law and order, finance, etc.

[History] Amend. II (3/26/66); IRA (11/16/35).

**SEC. 4.** The first election of the senate hereunder shall be called and supervised by the present tribal council at least thirty (30) days after the ratification and approval of this constitution. The three (3) candidates receiving the highest number of votes shall hold office for five (5) years, and the two next highest four (4) years, and the two next highest three (3) years; the two next highest, two (2) years; the two next highest, one (1) year; and they shall hold office until their successors are duly elected and qualified. After the first election, elections for the senate shall be called within sixty (60) days prior to the expiration of the terms of office of its members.

[History] IRA (11/16/35).

#### **ARTICLE IV-ELECTION AND NOMINATION FOR THE SENATE**

**SECTION 1.** All members of the community who are twenty-one years of age or older and who have either been residents, as defined by tribal ordinance, of Skagit County west of the Interstate-5 (I-5) freeway, or exhibited continued and regular contact with the people and activities, on the Swinomish Reservation, for a period of one (1) year immediately prior to any election, shall have the right to vote. The Senate shall define such continued and regular contact by Tribal Ordinances which shall include but not be limited to attending Senate, committee or General Council meetings, participating in social organizations, functions or activities on the reservation, or owning and maintaining land on the reservation.

[History] Amend. XI (9/7/85); Amend. III (3/26/66); IRA (11/16/35).

**SEC. 2.** The time and places of voting shall be designated by the senate.

[History] IRA (11/16/35).

**SEC. 3.** All elections shall be by secret ballot.

[History] IRA (11/16/35).

**SEC. 4.** Nomination of candidates for the senate under this constitution shall be by petition signed by not less than five (5) legal voters. A voter may sign only one petition for each office to be filled. Petitions for nomination shall be filed with the secretary of the senate at least thirty (30) days prior to the election for which the candidate makes such petition. The secretary shall determine the legality of the petitions and the eligibility of the candidates. The secretary's decision may be appealed to the senate, whose ruling shall be final. The list of qualified candidates shall be posted by the secretary of the senate in a public place not less than two (2) weeks prior to the election.

[History] Amend. III (3/26/66); IRA (11/16/35).

**SEC. 5.** All elections shall be held in accordance with the rules and regulations laid down by the senate.

[History] IRA (11/16/35).

#### **ARTICLE V-VACANCIES AND REMOVAL FROM OFFICE**

**SECTION 1.** If a member of the senate or official shall die, resign, or cease to live on the reservation or within fifteen (15) miles of the reservation boundary, or shall be found guilty of a felony, or misdemeanor involving dishonesty in any Indian, State or Federal court, the senate shall declare the position vacant and elect to fill the unexpired term.

[History] Amend. IV (3/26/66); IRA (11/16/35).

**SEC. 2.** The senate may by a two-thirds affirmative vote expel any member for neglect of duty or gross misconduct. Before any vote on expulsion is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated senate meeting; and the decision of the senate shall be final.

[History] IRA (11/16/35).

#### **ARTICLE VI-POWERS OF THE SENATE**

**SECTION 1. *Enumerated powers.*** - The senate of the Swinomish Indian Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws:

- (a) To negotiate with the Federal, State, and local Governments on behalf of the tribe and to advise and consult with the representatives of the Department of the Interior on all activities of the Department that may affect the Swinomish Reservation.

- (b) To employ legal counsel for the protection and advancement of the rights of the Swinomish Indians, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interests in lands or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other official or agency of government, provided that no tribal lands shall ever be sold, encumbered, or leased for a period exceeding that permitted by law.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Swinomish Reservation prior to the submission of such estimates to the Bureau of the Budget and to Congress.
- (e) To make assignments of reservation land to members of the Swinomish Reservation in conformity with article VIII of this constitution.
- (f) To manage all economic affairs and enterprises of the Swinomish Reservation in accordance with the terms of a charter to be issued to the Swinomish Indians by the Secretary of the Interior.
- (g) To appropriate for salaries of tribal officials or for public purposes of the reservation any available tribal funds, provided that any such appropriation made prior to July 1, 1940, shall be subject to review by the Secretary of the Interior.
- (h) To levy taxes upon members of the community and to require the performance of community labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the reservation.
- (i) To exclude from the restricted lands of the Swinomish Reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.
- (j) To enact resolutions or ordinances not inconsistent with article II of this constitution governing the adoption and abandonment of membership, and to keep at all times a correct roll of the members of the Swinomish Community.
- (k) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior:
  - (a) governing the conduct of all persons within the territory of the Swinomish Indian Reservation;
  - (b) governing tribal members beyond the limits of the Swinomish Indian Reservation with respect to exercising tribal fishing, hunting, and gathering

rights on all usual and accustomed fishing grounds and stations of the Swinomish Indian Tribal Community, on all open and unclaimed lands reserved by treaty for hunting or gathering and on such other lands and waters as is necessary for access to such fishing, hunting and gathering sites, and;

- (c) providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.
- (l) To safeguard and promote the peace, safety, morals, and general welfare of the Swinomish Reservation by regulating the conduct of trade and the use and disposition of property within the reservation, provided that any ordinance directly affecting non-members of the reservation shall be subject to review by the Secretary of the Interior.
- (m) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Swinomish Community.
- (n) To regulate the inheritance of property, real and personal, other than allotted lands within the territory of the Swinomish Reservation, subject to review by the Secretary of the Interior.
- (o) To regulate the domestic relations of members of the community subject to review by the Secretary of the Interior.
- (p) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution, subject to review by the Secretary of the Interior.
- (q) To cultivate and preserve native arts, crafts, culture, and Indian ceremonials.
- (r) To adopt resolutions regulating the procedure of the senate itself, and of other tribal agencies and tribal officials of the reservation.
- (s) To delegate to subordinate boards or to cooperative associations, which are open to all members of the community, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

[History] Amend. XIV (9/7/85); Amend. V (3/26/66); Amend. I (2/4/50); IRA (11/16/35).

**SEC. 2. *Manner of review.*** - Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation who shall, within ten (10) days after its receipt, approve or disapprove the same.

If the Superintendent shall approve any resolution or ordinance, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety (90) days from the date of receipt,

rescind the said resolution or ordinance for any cause, by notifying the senate of such decision.

If the Superintendent shall refuse to approve any resolution or ordinance within ten (10) days after its receipt by him, he shall advise the Senate of his reasons therefor. If these reasons appear to the senate insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its receipt, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

[History] Amend. V (3/26/66); IRA (11/16/35).

**SEC. 3. *Future powers.*** - The Senate of the Swinomish Reservation may exercise such further powers as may in the future be delegated to it by the Secretary of the Interior, or by any other duly authorized official or agency of government.

[History] IRA (11/16/35).

**SEC. 4. *Reserved powers.*** - Any rights and powers heretofore vested in the tribes or bands of the Swinomish Reservation, but not expressly referred to in this constitution, shall not be abridged by this article, but may be exercised by the people of the Swinomish Reservation through the adoption of appropriate by-laws and constitutional amendments.

[History] IRA (11/16/35).

**SEC. 5. *Additional powers.*** - The Senate of the Swinomish Indian Reservation shall exercise the following rights and powers heretofore vested in the Tribes or Bands of the Swinomish Reservation in addition to all powers already conferred or guaranteed by the Constitution and Bylaws of the Community:

- (a) ***Zoning power.*** - To regulate the land use of all property within the Swinomish Reservation.

[History] Amend. XV (9/7/85).

## ARTICLE VII-BILL OF RIGHTS

**SECTION 1. *Suffrage.*** - All members of the community over the age of twenty-one (21) years shall have the right to vote in all tribal community elections. The residence qualifications established by article IV of this constitution shall apply to all elections except elections for the amendment of this constitution and the attached bylaws.

[History] IRA (11/16/35).

**SEC. 2. *Economic rights.*** - All members of the community shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.



[History] IRA (11/16/35).

**SEC. 3. *Civil liberties.*** - All members of the community may enjoy without hindrance, freedom of worship, conscience, speech, press, assembly, and association.

[History] IRA (11/16/35).

**SEC. 4. *Rights of accused.*** - Any members of the community who shall be accused of any offense shall have the right to a prompt open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf. Trial by jury may be demanded by any prisoner accused of any offense punishable by more than thirty days imprisonment. Excessive bail shall not be required, and cruel punishment shall not be imposed.

[History] IRA (11/16/35).

## **ARTICLE VIII-LAND**

**SECTION 1. *Allotted lands.*** - Allotted lands, including heirship lands within the Swinomish Reservation, shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of Washington or of the Federal Government, or by the tribal community itself. It is further recognized that under existing law, such lands may be inherited by the heirs of the present owner, whether or not they are members of the community. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in the constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the community either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

[History] IRA (11/16/35).

**SEC. 2. *Tribal lands.*** - The unallotted lands of the Swinomish Reservation, and all lands which may hereafter be acquired by the community or by the United States in trust for the community, shall be held as tribal lands, and no part of such land shall be mortgaged or sold, unless specifically authorized by law, and then only with the consent and approval of the Secretary of the Interior. Tribal lands shall not be allotted to individual Indians, but may be leased to members of the community, or otherwise used by the community.

[History] Amend. VI (3/26/66); IRA (11/16/35).

**SEC. 3. *Leasing of community lands.*** - Community lands may be leased by the senate, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.

In the leasing of community lands, preference shall be given, first, to Indian cooperative associations, and, secondly, to individual Indians who are members of the community.

[History] IRA (11/16/35).

**SEC. 4. *Assignments not to be granted.*** - There shall be no further assignments of any type granted by the community: Provided, that assignments heretofore granted and in effect shall continue in effect in accordance with the terms of said assignment and the provisions of the Constitution for the Swinomish Indians of the Swinomish Reservation in effect at the time said assignment was granted.

[History] Amend. VI (3/26/66).

**SEC. 5. *Use of community land.*** - Community land, including any land under lease, shall be managed by the senate for the benefit of the entire community, and any income derived from such land shall accrue to the benefit of the community as a whole.

[History] Amend. VI (3/26/66); IRA (11/16/35).

**SEC. 6. *Acquisition of land by community.*** - The community may acquire land, or interests in land, by purchase or otherwise, provided such acquisitions are in accordance with law.

[History] Amend. VI (3/26/66); IRA (11/16/35).

## **ARTICLE IX-AMENDMENTS**

Amendments to the constitution and by-laws may be ratified and approved in the same manner as this constitution and by-laws.

Whenever five members of the senate shall consider an amendment necessary, such amendment shall be duly approved by five or more members of the senate and sent to the Secretary of the Interior. It shall then be the duty of the Secretary of the interior to call an election. If at such election the amendment is adopted by a majority of the qualified voters of the tribe voting herein and if at least thirty percent of those entitled to vote shall vote in such election, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, shall thereupon take effect.

[History] IRA (11/16/35).